

Schwarz Exh. 2 with Safeway Proposed Redactions

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

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Issue No. 3: As for depositions, the week of April 6th does not work for us as we have our reply brief due on April 6th, the mediation on April 7th and depositions scheduled in other matters for that week. Stephanie Urteaga and Steve Guthrie are generally available April 14-17 and possibly 22-24 (still waiting for confirmation from Urteaga on these later dates).

Thus, we can present Ms. Urteaga and Mr. Guthrie the week of April 13th if you want to split these up or if you want to take them all in one trip then the witnesses are not all available until April 22nd (subject to [REDACTED]). As for document searches relating to Request Nos. 54 and 55, Safeway's accounting group in Arizona is pulling the G/L data relating to account 312427. They don't have any data on "GW Retail Markup." They are looking into Line 8 "Other Income Adjustments" but they don't believe this has anything to do with the markup since that is covered in line 6 commission income. The data relating to account 312427 is quite extensive and will take some time to pull since they have to go back to April 2010. I am waiting for a time estimate from them on when I will get that data for processing. Matt Campbell's files were previously searched in this matter. Still, we are having his files reloaded into the forensic tool to allow us to run the 22 search terms you proposed plus the term "commission income." Once we see how many files those terms return, we can discuss what we will export or more narrow terms. We expect broad terms like "query and Campbell" or "query and Teradata" or "query and Lopes" will return a tremendous amount of documents since most of what Matt Campbell does is develop and run queries on Teradata. As for documents searches relating to Request Nos. 52 and 53, Safeway does not maintain an archive of its electronic files that goes back to 2005. It also does have an archive dedicated to Grocery Works email addresses or files. If someone who worked for Grocery Works or Safeway.com back in 2001-2005 still works for the company, then they might have files going back that far back on their machine. We are trying to locate such current employees, but as far as we can tell right now none of the people that would have been in a position (i.e., marketing or production) that dealt with Special Terms or registration pages are still with the company.

Brian

Brian Blackman

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SheppardMullin

From: Timothy N. Mathews [<mailto:TimothyMathews@chimicles.com>]

Sent: Tuesday, March 17, 2015 7:41 AM

To: Brian Blackman

Cc: Steven A. Schwartz; 'Scott Shepherd' (sshepherd@sfmsslaw.com); 'Jim Shah' (jshah@sfmsslaw.com); Craig Cardon

Subject: RE: Safeway - Query and accounting-related document searches

Brian,

Please email us Safeway's responses to our ninth set of discovery. Also, as reminders, we await: (1) Safeway's supplemental responses to our eighth set of discovery (concerning the Dec 22, 2014 changes to order screens), and the written responses to the questions asked in my March 9 email (relating to Copient promotions, G and R codes, etc.); (2) a written response concerning the [REDACTED] which did not appear in the registration database; and (3) Safeway's responses regarding document searches and deposition dates discussed on our call last Thursday.

Thanks.

Tim

From: Timothy N. Mathews

Sent: Thursday, March 12, 2015 3:43 PM

To: Brian Blackman (BBlackman@sheppardmullin.com)

Cc: Steven A. Schwartz; 'Scott Shepherd' (sshepherd@sfmtslaw.com); Jim Shah (jshah@sfmtslaw.com); Craig Cardon (CCardon@sheppardmullin.com)

Subject: Safeway - Query and accounting-related document searches

Brian,

As discussed on our meet and confer call today, below is a list of potential search terms for our document request numbers 54 and 55, related to the query and Safeway's accounting for the markup. Since Safeway obviously has better knowledge of its own files, we expect that Safeway will help formulate search protocols to efficiently locate responsive documents. This list is just to get the ball rolling.

At a minimum, we believe the query-related searches should be run against the files of Matt Campbell, since he drafted the query and his files have not yet been searched. We suspect that there are other custodians whose files might need to be searched too. We will await your proposal on those.

Finally, you said you would do some digging to determine where and how electronic files relating to pre-2006 issues might be stored. As noted on the call, the custodians whose files have been searched previously in this litigation did not hold positions with Safeway.com during the 2001-2005 time frame, so it is little surprise that the searches of their files did not turn up any pre-2006 documents. We await the results of your investigation.

Thanks.

Tim

DRAFT SEARCH TERMS FOR REQUESTS 54 AND 55

Teradata AND query

(GL OR G/L) AND query

Query AND markup

account AND 312427

"GW Retail Markup"

1101 AND 1103 AND (markup OR mark-up OR mark)

"Other Gross Profit Adjustments"

"GL ledger"

G/L

(GL OR G/L) AND commission

Groceryworks AND ledger

Groceryworks AND "Pricing Initiative"

Sales AND commission AND ("price zone" OR "price initiative" OR "pricing initiative" OR PZ)

"GL H/(L)"

"GL OR G/L" AND variance

"price zone impact by week"

Query AND Campbell

Query AND Lopes

Impact AND Lopes

Impact AND Campbell

"Other Gross Profit Adjustments"

Query and ("PZ impact" OR "price zone")

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